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German Scientists - Legal Problems

It is desirable to explore, particularly along legal lines, the possibility of creating such conditions of entry, employment and movement within and outside the United States of the German scientists as to insure that the purposes sought to be accomplished by their importation will, in fact, be accomplished while, at the same time, neither security dangers are increased nor unjustifiable preferential treatment of Germans over non-Germans accorded by this Government. The problem of special devices arises because under existing legislation, it is assumed, no governmental authority exists for control of the movements and activities of such scientists, especially if they should attain the status of permanent residents and then of naturalized citizens.

A. For purposes of analysis, it is well to bear in mind that the following relationships provide opportunities for the imposition of legal conditions:

1. Contract between the United States Government, through the sponsoring agency, and the scientist.
2. Contract between the United States Government, through the sponsoring agency, and the scientist's family seeking entrance (families of permanent residents have preferences under the quota).
3. Contract between the United States Government, through the sponsoring agency, and the public or private subcontractor by whom the scientist is to be employed.
4. Contract between the subcontractor and the scientist.

Each of the foregoing involves a special consideration in which public policy elements enter.

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B. In addition to the foregoing, there are institutional conditions within the United States which may be created to minimize the security risks. Among these are:

1. The immigration terms. This subject would have to be taken up further with the immigration authorities.

2. The conditions of employment and other professional activity.

a. It must be noted that someone in the Government must be officially charged now and hereafter with the duty of periodic check to see that the conditions of employment are observed. If the sponsoring agency is unable or unwilling to accept and perform this duty, the burden would ordinarily fall on the internal security authorities, such as the F.B.I. and the Immigration Service. Their willingness to undertake such a burden should be ascertained.

b. Scientists should if possible be dispersed, and they should in their work be surrounded by Americans who should be charged with learning as much as possible from the Germans. At the same time, dispersal would constitute a security control since it would tend to prevent close association of Germans for conspirational purposes.

c. Instructed surveillance should be provided for a maximum period, possibly with periodic reports to the sponsoring agency or to the internal security authorities. Evidence of a plan for rebuilding science or technology in Germany's cause should be looked for and promptly reported.

d. A definite program should be assigned to the sponsor of so building up American technique and knowledge as to remove the dependence on the German scientists for any unique contributions.

C. The particular legal problems which arise would seem to include the following:

1. Enforceability by injunction of provisions against such activities as association with German

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scientific or nationalist groups, communication of certain kinds of information to Germany, unauthorized travel to Germany, etc. Since the presumed unenforceability of contractual limitations on personal freedom derives from public policy considerations, the subject to be explored in the present connection is the force of the peculiar countervailing policy consideration in this case. These considerations would be explicitly stated in the contract and consent to injunctive relief would be specifically given by the scientist.

We would rely, first, on the effectiveness of such written provisions to discourage violation by the German scientists, and secondly, on the chances of persuading a court in the event of a lawsuit that the special public policy considerations outweigh the general contrary argument. It should be borne in mind that these contract provisions should apply in the case of temporary admission, permanent admission and even following naturalization.

Drafts of such provisions should be submitted, together with memoranda of law. Thought might be given to an Attorney General's opinion.

2. The preceding problem may also be considered in connection with liquidated damages or even the provision of a bond--which, however, would be less satisfactory than an injunction.

3. The legal basis for (a) denial of a passport or re-entry permit to a scientist in the case of violation, as well as (b) denial of naturalization, and whether naturalization could be revoked in the event of subsequent violation.

4. The possibility of exclusion from Germany hereafter of such Germans as seek to enter in violation of their agreements. The terms of the ultimate treaty of peace, etc. might be considered in connection with other devices for insuring effective disarmament of Germany.

5. The administrative power of the sponsoring agencies to provide regulations for subcontractors, etc., and drafts of appropriate regulations.

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